

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 994 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and Sd/-

MR.JUSTICE R.P.DHOLAKIA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 - No

STATE OF GUJARAT

Versus

MASANGSINH PUNJSINH ZALA

Appearance:

PUBLIC PROSECUTOR for Petitioner

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

Date of decision:06-05-98

C.A.V. JUDGEMENT (Per: R.P.Dholakia,J.)

Being aggrieved by the order of acquittal recorded by the learned Sessions Judge, Himmatnagar, in Sessions Case No.40 of 1996 on 31-7-1997, the State has preferred this appeal. The respondents-accused were tried for the offences punishable under Secs.323, 504 and 506(2) of Indian Penal Code and Sec.3(1)(5)(10) of Atrocity Act.

.RS 2

#. The case of the prosecution is that on 17-4-1996

at about 10 a.m. complainant-Bhikhabhai Ramabhai alongwith his wife, son and daughter-in-law were in the field for collecting wheat. Accused Nos.1,2 and 4, who were also in the field, gave abuses to the complainant and his family members and used filthy languages which were humiliating him and his community. Accused also gave kick and fist blows to the complainant and his son and also threatened that if they enter in their field, they will be killed. The complainant narrated the incident to DSP, Talod, who directed PSI, Mr.Chavda to investigate the matter. Mr.Chavda went to Village Chhanapur, recorded the complaint of Bhikhabhai Ramabhai and registered the offence. He recorded the statements of Somabhai Bhikhabhai, Hiraben Bhikhabhai, Kamuben Somabhai, Hansaben Somabhai, etc. and gave yadi to injured Bhikhabhai and Somabhai to take medical treatment. He prepared panchnama of scene of offence and after completion of investigation, submitted the charge-sheet against the accused. Accused pleaded not guilty to the charge framed by learned Sessions Judge and claimed to be tried.

#. Learned Addl. Public Prosecutor on going through the evidence argued that it is a settled legal position that Court can convict the accused based on the evidence of the injured witnesses. He argued that in the present case, complainant and his son are injured eye witnesses and no corroboration is required looking to the facts and circumstances of the case. He further argued that independent witness-Balvantsingh Deepsingh fully supported the prosecution case. Therefore also, the learned Sessions Judge ought to have convicted the accused.

#. We have gone through the judgment and it is clear that accused No.1 was cultivating the agricultural land belonging to complainant since last 20 years and an ex-parte injunction was obtained on 22-1-1996 by the complainant by filing a Civil Suit No.5 of 1996 before the Civil Judge at Pratij. It is to be noted that on the day of incident, two incidents have taken place, one at 9 a.m. and another at 10 a.m., but the complainant has not narrated anything about the first incident. Dr.Anjali Omprakash Goel, who examined Bhikhabhai Ramabhai and Somabhai Bhikhabhai on 18-4-1996 at 12.50 p.m., stated on oath that no external mark of injury was found on these persons. If we believe the say of the prosecution that accused gave kick and fist blows to complainant and his son and scuffle took place for half-an-hour, then some external mark of injury must have been there on the body of these persons. Therefore, a doubt is created

regarding the story narrated by the complainant and his son. Accused No.2, who contested election for Sarpanch, lost the election where complainant supported Pravinsingh, who is brother of Takhatsingh. Therefore, enmity was going on between complainant and accused. The complainant has categorically admitted in his evidence that he went to DSP's office alongwith Takhatsingh and Balvantbhai. It appears that, it is Takhatsingh and Balvantsingh, who instigated the complainant to file the complaint.

#. We have gone through the evidence which was suggested to be read by learned Addl. Public Prosecutor. In an appeal against the order of acquittal, though there is no limitation upon the power of the High Court to review at large the evidence upon which, the acquittal was founded and to reach to a conclusion that the order of acquittal should be reversed, in exercising that power and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the view of the trial Judge as to the credibility of the witnesses; ((2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (3) the right of the accused to the benefit of any doubt, and, (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses (AIR 1934 PC 227).

#. We are not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:-

".... This court has observed in *Girija Nandini Devi V. Bigendra Nandini Chaudry* (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

#. Based on the above two observations and looking to the facts and circumstances of the case, we do not find it necessary to interfere with the order of acquittal recorded by learned Sessions Judge, Himmatnagar. Hence appeal is rejected.

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